

2017 Employee Benefits Webinar Series
ACA Update and Post-Election Debrief
February 16, 2017

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- The New Political Reality (At Least for Now)
- Obamacare, Trump & The 115th Congress
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 - Replacement: The Possibilities
 - Executive Orders & The New Regulatory Regime
- Other New Developments
 - HHS Notice of Benefit & Payment Parameter, Other Guidance
 - Qualified Small Employer Health Reimbursement Arrangements (HRAs)
- IRS Guidance on Fixed Indemnity Plans

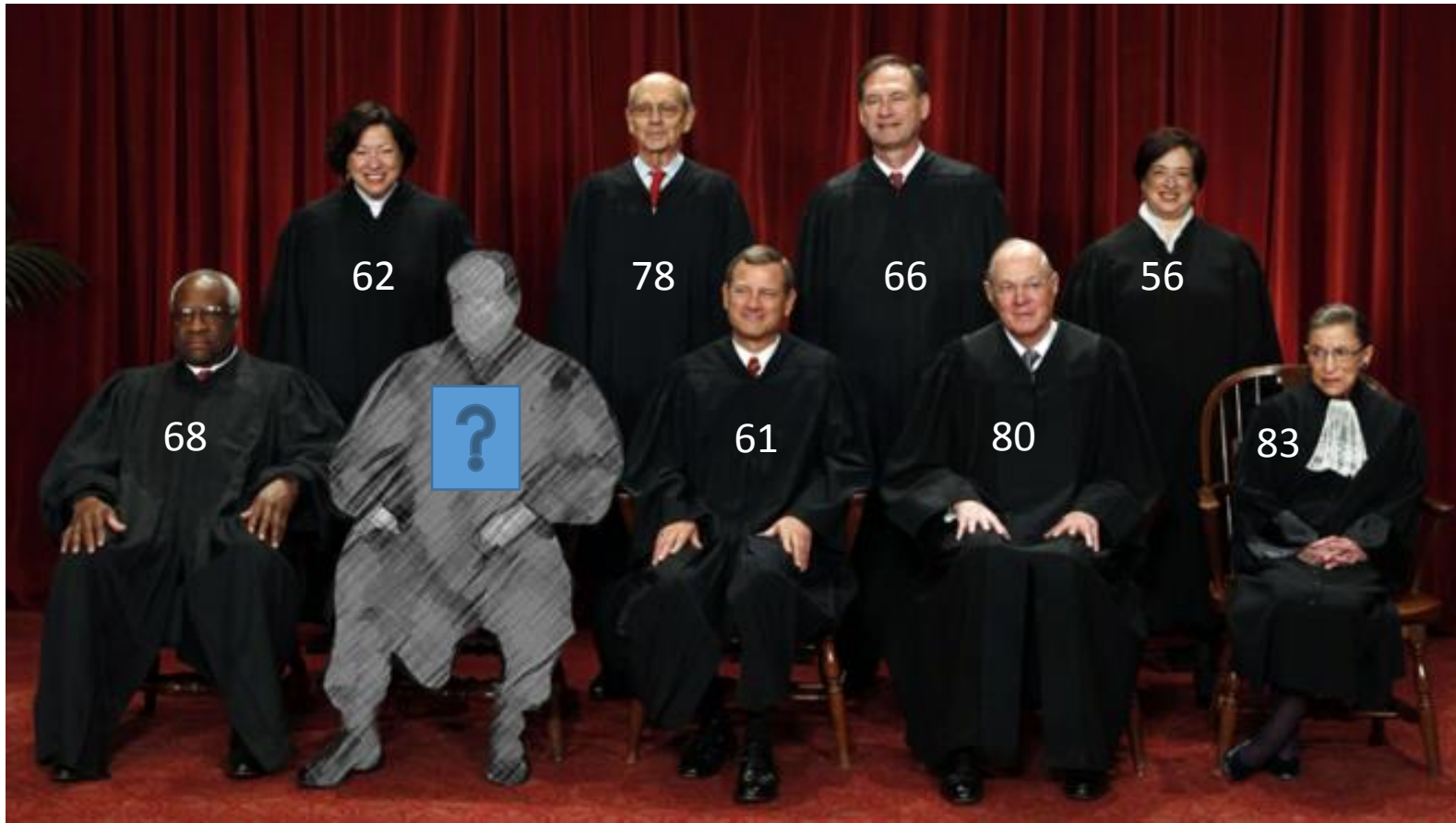
The New Political Reality (At Least for Now)



- Donald J. Trump—45th President of The United States
- Unified Republican House and Senate
 - Democrats picked up 7 seats in the House (241-194)
 - Democrats picked up 2 seats in the Senate (52-48)
- 100-Day Plan
 - Repeal of the ACA
 - Don't believe everything you hear on the campaign trail
 - Will be difficult to repeal ACA entirely without 60 vote supermajority in Senate

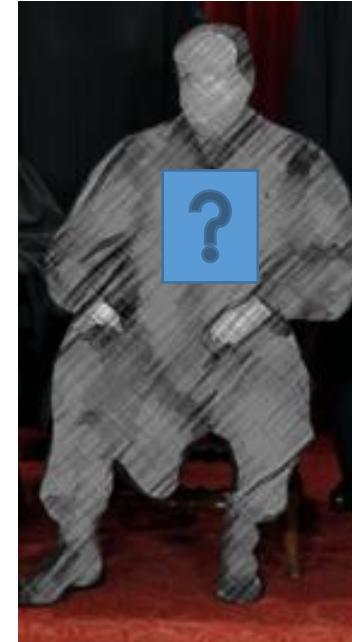
The New Political Reality (At Least for Now)

- The Supreme Court



The New Political Reality (At Least for Now)

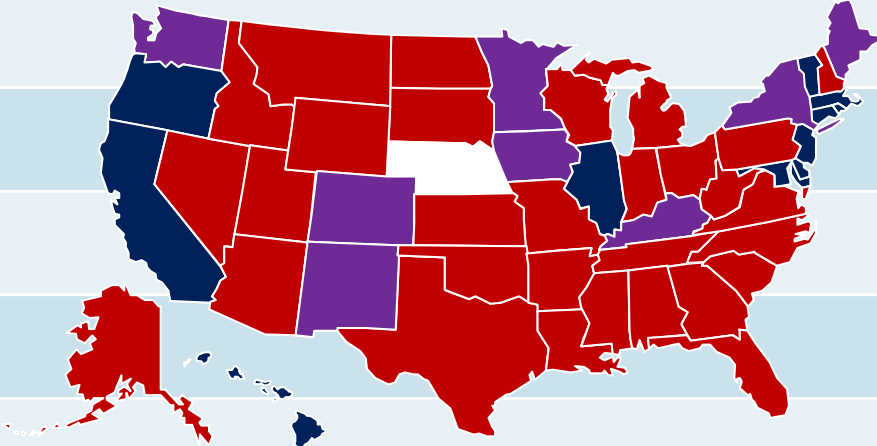
- The Supreme Court
 - Who it won't be: Merrick Garland
 - Who it might be: Neil Gorsuch
 - Age 49, U.S. Court of Appeals for 10th Circuit
 - Appointed by President George W. Bush in 2006
 - Opinions are similar to Scalia's; known as exceptionally clear and routinely entertaining to read
 - "Textualist" (like Scalia)
 - Differs from Scalia on *Chevron* deference
 - Participated in *Hobby Lobby* and *Little Sisters of the Poor* cases
 - Appears to have a pro-religion conception of Establishment Clause



The New Political Reality (At Least for Now)

- The States

25	Republican Controlled States (Governor/Legislature)
5	Democratic Controlled States (Governor/Legislature)
7	Governor (D)/Legislature (R)
7	Governor (R)/Legislature (D)
1	Governor (I)/Legislature (Split)
1	Governor (R)/Legislature (Split)
1	Governor (D)/Legislature (Split)



Obamacare, Trump & The 115th Congress



- The Philosophical Mindset
 - Republicans: A Defined Contribution Model
 - Democrats: A Defined Benefit Model
 - Leading Proposals:
 - Tom Price’s “Empowering Patients Act”
 - Paul Ryan’s “A Better Way”
 - Orin Hatch’s “Patient Care Act”
 - Cassidy-Collins’ “Patient Freedom Act”

Repeal: What Stays & What Goes

- What is Likely to Stay
 - Many of the ACA’s “insurance mandates” likely to remain given the difficulty of unraveling the insurance mandates because of Senate Filibuster
 - No Evidence of Insurability for Health Insurance
 - A reliable tool of the insurance industry
 - ACA: no pre-existing condition limitations
 - HIPAA: pre-existing conditions limitations offset by immediately prior periods of existing coverage (Ryan’s proposal)

Repeal: What Stays & What Goes

- What is Likely to Stay
 - Coverage for Adult Children
 - ~54 million Americans between the ages of 18 and 30 (~17%)
 - Sluggish economic recovery
 - 26 may be too low
 - Advantages to keeping this population in the insurance pool

Repeal: What Stays & What Goes

- What is Likely to Stay
 - Annual & Lifetime Maximums
 - Concept of Essential Health Benefits probably here to stay
 - Eliminating annual and lifetime limits popular
 - Tax credits to small businesses
 - Subsidies to purchase insurance and “exchanges”

 - Possibilities:
 - Medicaid—block funding
 - Medicare Reform

Repeal: What Stays & What Goes

- What Could Go
 - Individual Mandate
 - Efficacy has always been suspect
 - Employer Mandate
 - Cadillac Tax

 - It appears all of these could be repealed through budget reconciliation—
which escapes filibuster

Repeal: What Stays & What Goes

- What Could Go
 - Employer Mandate
 - Pay-or-Play In Present Form May Not Survive
 - Bi-Partisan approach may evolve that involves more emphasis on the carrot and none on the stick
 - Repeal of current rules could be **YUGE!**
 - 30 hour rule
 - Counting hours
 - Affordability
 - Variable hours
 - Minimum Value
 - Reporting



Replacement: The Possibilities

- Permit Sale of Health Insurance Across State Lines
 - Increased competition
 - Reduced administrative expenses
 - Foster new approaches to network creation
- Increase Use of Tax-Favored Vehicles
 - HSAs
 - FSAs
- Allow Individuals to Deduct Premium Costs
- Provide Individuals With Tax Credits/Subsidaries for Premiums

Replacement: The Possibilities

- Tort Reform
- Provider Price Transparency
 - Promote Consumerism
- Remove Prescription Drug Barriers
 - Write rules to allow access to imported, safe and dependable drugs from foreign sources

Replacement: The Possibilities

- Paying For It
 - Medicare and Entitlement Reform
 - Taxes (it's inevitable)
 - Phase Out of Tax-Preference on Employer Sponsored GHPs
 - Cost of Coverage Model
 - Income/Premium Model

Replacement: The Possibilities

- Beware State Action
 - Massachusetts Universal Healthcare Presents a Model
 - Charlie Baker Has Already Promoted Re-Introduction in MA
 - Even states that don't implement overhaul may introduce new requirements
 - The Lesson of Amendment 69 in Colorado—will it be learned?

Executive Orders & The New Regulatory Regime

- First Executive Order
- More to Come
- Repeal of Executive Orders & Other Action
 - Certain Preventive Care Benefits
 - Little Sisters of the Poor
 - Transgender Benefits
 - The Candidate's Pledge: For Every One—Two Must Go



Executive Orders & The New Regulatory Regime

- The order directs HHS and other agency heads to exercise all available authority and discretion to grant exemptions from or delay the implementation of any provision of the ACA that would impose a fiscal burden on States, individuals, families, providers, insurers, purchasers of health insurance, or makers of medical devices
 - No direct impact on employers
- To the extent that following the order would require revision of regulations issued through notice-and-comment rulemaking, the agencies will need to comply with the Administrative Procedures Act
- ACA reporting continues to be enforceable law at this time

HHS Notice of Benefit & Payment Parameters, Other Guidance

- IRS will begin sending employer mandate penalty notices for 2015 “early in 2017”
- IRS has begun sending “applicable large employer” notices to employers (requests for Forms 1094-C / 1095-C)
- Federal Poverty Level Released for 2017: \$12,060
 - FPL-affordable coverage in 2017 = **\$97.38** / month
- ACA OOP limits for 2018: \$7,350 (individual) / \$14,700 (family)
- CMS confirms that involuntary loss of Marketplace coverage is a HIPAA special enrollment event for entry into an employer’s plan

Qualified Small Employer Health Reimbursement Arrangements

- Allows small employers (non-Applicable Large Employers) to use an HRA to reimburse medical expenses and individual market health insurance premiums, up to a specified annual limit
 - Limit for 2017 is \$4,950 (individual) / \$10,000 (family)
 - Limits must be prorated for partial years of coverage
 - Employer contribution generally must be the same for all eligible employees; however, certain variations are permitted based on age and number of covered family members
 - Employers offering a QSEHRA cannot offer any Group Health Plan coverage to employees

Qualified Small Employer Health Reimbursement Arrangements

- Notice Requirements
- Employers must notify employees at least 90 days prior to the beginning of the plan year (or upon eligibility for employees who become eligible during the year)
- Notice must state:
 - the amount available under the HRA for the year;
 - that employees receiving federally subsidized coverage must disclose the HRA contribution to the Marketplace; and
 - that if the employee does not have MEC, an individual mandate penalty may apply and any reimbursement from the HRA may be included in gross income that month
- Notice failures may result in penalty of \$50 per employee, not to exceed \$2,500 per year

Qualified Small Employer Health Reimbursement Arrangements

- Federal Premium Subsidy Reduction
- Employees participating in a QSEHRA will have their monthly federal premium subsidy reduced by 1/12th of the employer's annual QSEHRA contribution
 - If the QSEHRA provides “affordable” coverage, subsidy will be \$0 that month
 - Coverage is “affordable” if the cost of the second-lowest-cost silver plan in the Marketplace minus the employer's HRA contribution does not exceed 9.69% (for 2017) of the employee's household income

Qualified Small Employer Health Reimbursement Arrangements

- **Effect on Other Laws**
- QSEHRAs are not be considered group health plans under ERISA and, with the exception of the Cadillac tax, will not be subject to the ACA's market reforms, including ACA reporting for self-insured plans
 - No plan document, SPD or Form 5500 requirement
- QSEHRAS are also exempt from COBRA continuation requirements

IRS Office of Chief Counsel Memo 201703013

- Addresses potentially abusive arrangements
 - Programs that claim they can be implemented at no cost to the employer and without impact to an employee's net take-home pay and will result in:
 - Employers saving an average of \$1,000 in FICA taxes per employee per year;
 - Employees receiving an average of \$2,000 per year in additional benefits
 - Memo notes that payments under a fixed-indemnity plan are taxable when premiums are paid pre-tax

Questions?



HR Professional Credits



Activity ID: 17-1BRRL

Title: ACA Update and Post-Inauguration Debrief

Start Date: 2/16/2017

End Date: 2/16/2017

Professional Development Credits: 1



Program ID: 301873

Title: ACA Update and Post-Inauguration Debrief

Start Date: 2/16/2017

End Date: 2/16/2017

Recertification Credit Hours Awarded: 1.0

Specified Credit Hours: General

